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No. 111 Original

In The
Supreme Court of the United States
October Term, 1988

STATE OF DELAWARE,
Plaintiff,

and

STATE OF TEXAS,
Plaintiff in Intervention,

v.

STATE OF NEW YORK,
Defendant.

MOTION OF THE STATE OF TENNESSEE FOR LEAVE TO INTERVENE AND COMPLAINT IN INTERVENTION

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MOTION OF THE STATE OF TENNESSEE FOR LEAVE TO INTERVENE

Pursuant to Rule 9 of the Rules of the Supreme Court, the State of Tennessee, a sovereign state of the United States of America, by and through Charles W. Burson, Attorney General and Reporter for the State of Tennessee, moves this Court for an order permitting intervention in the above-styled case, and permitting the adoption, to the extent appropriate, of the brief in support of motion

for leave to file a complaint filed by the State of Texas, the plaintiff in intervention. In support of this motion, the State of Tennessee states the following:

1. On or about May 31, 1988, this Court granted the motion of plaintiff, State of Delaware (Delaware), for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and the defendant, State of New York (New York), as to which the state is entitled to claim and take possession of certain unclaimed intangible personal property, consisting of monies and other intangible property (excess receipts),[1] held or formerly held by securities brokerage houses incorporated in Delaware and demanded by or remitted to New York.

2. On December 12, 1988, Thomas Jackson was appointed Special Master in this case.

3. On February 21, 1989, this Court granted the motion of Texas to intervene and file its complaint in intervention in this case.

4. As set forth in detail in its complaint, Texas claims a portion of the excess receipts which constitute the subject matter of the original controversy between Delaware and New York, specifically, that a portion of the excess receipts held or formerly held by securities brokerage houses incorporated in Delaware which are attributable to issuers incorporated in Texas.

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[1] In its complaint in intervention, the plaintiff in intervention, Texas (Texas), has defined certain terms relative to this case. The State of Tennessee incorporates those definitions into this motion by reference.

5. Texas also claims the right to take custodial possession of certain additional excess receipts, consisting of excess receipts attributable to issuers incorporated in Texas held or formerly held by the Depository Trust Company (DTC) and excess receipts which have arisen in connection with distribution made by Texas municipal and other governmental issuers (additional excess receipts) which are now being demanded by or remitted to New York. It is the understanding of the State of Tennessee that this Court intends to consider claims to both the excess receipts originally at issue and the additional excess receipts identified by Texas.

6. Texas claims a portion of the excess receipts and the additional excess receipts for the reason that they constitute a debt owed by the issuer to the securities' beneficial owner. If the identity of the beneficial owner is unknown, the excess receipts and additional excess receipts should be remitted to the state of incorporation of the issuer under the state's unclaimed property law.

7. The State of Tennessee claims a portion of the excess receipts and additional excess receipts at issue in this action, specifically, that portion of the excess receipts and additional excess receipts attributable to the issuers incorporated in the State of Tennessee and that portion attributable to Tennessee municipalities and other governmental entities.

8. The amount of excess receipts and additional excess receipts that the State of Tennessee is entitled to claim is presently unknown. The State of Tennessee has never, prior to this lawsuit, had any reason to identify and quantify such excess receipts and additional excess receipts.

However, it is probable that at least one issuer incorporated in the State of Tennessee has generated excess receipts and/or additional excess receipts. Moreover, it is virtually certain that bonds issued by Tennessee municipalities and other governmental entities have generated additional excess receipts subject to the claim of the State of Tennessee.

9. The State of Tennessee asserts its claim pursuant to Tennessee Code Annotated § 66-29-101, *et seq.*, which provides that any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bond holder, or other security holder, or a participating patron of a corporation, who has not claimed it within seven years after the date prescribed for payment is presumed abandoned and owing to the state if the business association is organized under the laws of or created in the State of Tennessee. *See* Tennessee Code Annotated § 66-29-107 (Supp. 1988). Moreover, all property in Tennessee not otherwise covered under any other provision of the Tennessee law including income or increment thereon that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years is presumed abandoned and payable to the state. *See* Tennessee Code Annotated § 66-29-112 (Supp. 1988). The full text of Tennessee's Unclaimed Property Act is set forth in the appendix to this motion.

10. The State of Tennessee supports and adopts as if set forth fully by the State of Tennessee in its own pleadings the brief in support of motion for leave to file by Texas, and the factual and legal arguments set forth there-

in, to the extent the same are applicable and relevant to the claims of the State of Tennessee set forth in paragraph seven of this motion.

11. It is essential that the State of Tennessee be permitted to intervene in its own right in this proceeding. The decision of this Court will establish a rule of law which will conclusively determine the future right of the State of Tennessee to claim and take possession of unclaimed property similar or identical in nature to the excess receipts and additional excess receipts at issue in this case. Additionally, if the State of Tennessee is to establish its claim and right to take custodial possession of a portion of the property presently at issue, it must have access to the discovery process in order to identify those excess receipts and additional excess receipts attributable to issuers incorporated in the State of Tennessee. As a party, the State of Tennessee can obtain a ruling from this Court recognizing its right to take possession of specific unclaimed property pursuant to its individual unclaimed property laws and ordering New York to tender such property to the State of Tennessee.

12. Based on the foregoing, the State of Tennessee is entitled to intervene as a matter of right pursuant to which will conclusively determine the future right of the Rule 24(a)(2), Federal Rules of Civil Procedure. Alternatively, the State of Tennessee urges this Court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b), Federal Rules of Civil Procedure.

13. The intervention of the State of Tennessee in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the present parties. To the extent that it can do so, Texas has offered to serve

as lead counsel for those states, including the State of Tennessee, wishing to intervene and represent themselves in this case. The addition of the State of Tennessee as a plaintiff in intervention will not result, therefore, in an unmanageable increase in the number of parties to this litigation.

14. This Court in *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961), recognized the difficulties inherent in resolving controversies between different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that this Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. *See also, Pennsylvania v. New York*, 407 U.S. 206 (1972). It is such an opportunity to present its claim that the State of Tennessee seeks by urging this Court to grant leave to intervene in this case.

THEREFORE, the State of Tennessee requests that it be permitted to intervene as a party plaintiff in this case to assert the claims set forth in the attached complaint in intervention.

Respectfully submitted,

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State of Tennessee

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Deputy Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219-5025

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COMPLAINT IN INTERVENTION

—o—

I.

INTRODUCTION

The State of Tennessee (Tennessee), the plaintiff in intervention, by Charles W. Burson, Attorney General and Reporter of the State of Tennessee, with leave first had, files this complaint in intervention in the above styled and numbered cause, and states as follows:

II.

JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the

United States and Section 1251 of Title 28 of the United States Code.

III.

PENDING ACTION

2. On May 31, 1988, this Court granted the plaintiff State of Delaware's (Delaware) motion for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and the defendant State of New York (New York) as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms in Delaware.

3. On February 21, 1989, this Court granted the State of Texas' (Texas) motion for leave to file a complaint in intervention. The Texas complaint also made subject to this suit certain additional unclaimed intangible personal property held by securities brokerage firm and non-brokerage firm intermediaries.

IV.

INTEREST AND CLAIM OF TENNESSEE

4. Tennessee acts by and through the Attorney General and Reporter of Tennessee, the official of Tennessee charged with the duty under the Constitution and laws of Tennessee of prosecuting unclaimed property suits and representing Tennessee in litigation generally.

5. Tennessee seeks a determination of its rights to certain of the unclaimed intangible personal property, referred to as "excess receipts" and "additional excess re-

ceipts" which comes into being and acquires its character as unclaimed property in the context of securities transactions.

6. Tennessee is entitled to a portion of the excess receipts and additional excess receipts at issue in this litigation because they constitute a debt of the entity (issuer) initially issuing the shares of stock, bonds, debentures or other securities instruments owed to the entity or individual (beneficial owner) who has the economic rights to the security, including the entitlement to distributions.

7. If the identity and location of the beneficial owner is unknown, the state of incorporation of the issuer should be entitled to collect the excess receipts and additional excess receipts under that state's unclaimed property law. Under existing law and practice, a debt of identical character is remitted to the issuer's state of incorporation when held by the issuer's paying agent so it should be similarly remitted to the state of incorporation of the issuer when held by other agents in the securities holding, transfer, and distribution system. Distributions generated by issuers incorporated in Tennessee and those generated by Tennessee which are unclaimed and whose beneficial owner is unknown, should be returned to Tennessee. The claim of Tennessee is based on the practical reality and manner in which securities are traded and distributions are paid, and relies upon a strict interpretation of the Court's holding in *Texas v. New Jersey*, 379 U.S. 674 (1965).

8. By this action, Tennessee seeks a judgment that New York pay to Tennessee all excess receipts and additional excess receipts attributable to issuers incorporated in Tennessee and those that attributable to Tennessee mu-

nicipalities. Tennessee further seeks a declaration that it has the right in the future to claim and take possession of excess receipts and additional excess receipts without interference from any other state. Tennessee additionally seeks an order from this Court enjoining and restraining New York from demanding or collecting such excess receipts and additional excess receipts, and from expending any such sums collected, but presently unspent, which are attributable to issuers incorporated in Tennessee and to Tennessee municipalities, until such time as this controversy is resolved.

9. Tennessee asserts its claim pursuant to Tennessee Code Annotated § 66-29-101 *et seq.* (Supp. 1988) which provides, in essence, for the custodial taking of abandoned or unclaimed property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to such property has been asserted within the applicable dormancy period, which for most types of personal property in Tennessee is seven years.

V.

DEFINITIONS

10. Tennessee adopts by reference the definitions of the terms set forth by Texas in its intervening complaint on pages 12 through 17.

VI.

PRAYER FOR RELIEF

THEREFORE, Tennessee requests that this Court grant the following relief:

1. That Tennessee be allowed to intervene in this case to protect its interests;

2. That New York be restrained and enjoined from collecting any excess receipts and additional excess receipts attributable to issuers incorporated in Tennessee or attributable to Tennessee governmental issuers, and from expending any sums collected but presently unspent, consisting of such excess receipts and additional excess receipts, until such time as this controversy is resolved;

3. That New York be directed to pay or deliver to Tennessee all of the excess receipts and additional excess receipts paid or delivered to New York attributable to issuers incorporated in Tennessee and Tennessee governmental issuers which have been abandoned for the applicable dormancy period under Tennessee's Unclaimed Property Law.

4. That Tennessee be granted such other and further relief as the court deems just and equitable.

Respectfully submitted,

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Attorney General & Reporter
State of Tennessee

MICHAEL W. CATALANO
Deputy Attorney General
State of Tennessee

[Counsel of Record]

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APPENDIX

UNIFORM DISPOSITION OF UNCLAIMED [PERSONAL] PROPERTY ACT

66-29-101. *Short title.*

66-29-102. *Definitions.*—As used in this part, unless the context otherwise requires:

(1) "Banking organization" means any national bank or state bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or private banker;

(2) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership cooperative, or any association for business purposes of two (2) or more individuals;

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company;

(4) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(5) "Life insurance corporation" means any association or corporation transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;

(6) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his or her legal representative;

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity, whether such person is acting in his or her own right or in a representative or fiduciary capacity;

(8) "Property" means tangible personalty located in this state and all intangible personalty;

(9) "Treasurer" means the treasurer of the state of Tennessee;

(10) "Utility" means any person who owns or operates for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; and

(11) "Local government" means any municipality or county located in Tennessee.

66-29-103. *General rules for taking custody of intangible unclaimed property.*—Unless otherwise provided in this part or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under this section or §§ 66-29-104—66-29-111 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is estab-

lished that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(A) The last known address of the person entitled to the property is in this state; or

(B) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state; and

(A)(i) The last known address of the apparent owner or other person entitled to the property is unknown; or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(B) The holder is a domiciliary of a state that does not provide by law the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property .

66-29-104. *Property held by banking or financial organizations or by business associations.*—The following property held or owing by a banking or financial organization or by a business association is presumed abandoned;

(1) Any demand, savings, or matured time deposit made with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

(A) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(B) Corresponded in writing with the banking organization concerning the deposit; or

(C) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization, providing such memorandum is one which is routinely kept according to customary banking practices;

(2) Any funds paid toward the purchase of shares or other interest in a financial organization or any deposit

made therewith, and any interest or dividends thereon excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(A) Increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends;

(B) Corresponded in writing with the financial organization concerning the funds or deposit; or

(C) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3)(A) Any sum payable on checks certified or on written instruments issued on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, unless the owner has within the time period corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(8) Provided however, no sum payable on a traveler's check, money order or similar written in-

strument, other than a third-party bank check, may be subjected to the custody of the state as unclaimed property unless:

(i) The records of the issuer show that the traveler's check, money order or similar written instrument was purchased in this state;

(ii) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order or similar written instrument was purchased; or

(iii) The issuer has its principal place of business in this state and the records of the issuer show the state in which the traveler's check, money order or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property;

(4)(A) Any surplus amount resulting from the sale of safe deposit box contents by banking institutions pursuant to § 45-2-907, if the proceeds cannot be credited to an existing customer account within one (1) year. Any credit of these proceeds to a customer account will not be considered as account activity under subdivisions (1) and (2) above;

(B) For activity not governed by § 45-2-907, any funds or other personal property removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box on which the lease or rental period has expired due to nonpayment of rental

charges or other reason that have been unclaimed by the owner for more than two (2) years from the date on which the lease or rental period expired; or any surplus amount arising from the sale thereof pursuant to law that has been unclaimed by the owner for one (1) year; and

(5) Property described above, without regard to any activity or inactivity within specified abandonment periods, whose owner is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-105. *Unclaimed funds held by life insurance corporations.*—(a) Unclaimed funds held and owing by a life insurance corporation shall be presumed abandoned if the provisions of this section and § 66-29-103 are satisfied. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b)(1) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not

matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years:

(A) Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan; or

(B) Corresponded in writing with the life insurance corporation concerning the policy.

Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

(2) "Unclaimed funds" shall also include all moneys held and owing by any life insurance corporation under this subdivision to any owner who is known to the company to have died and left no one to take such moneys by will and no one to take such moneys by intestate succession.

66-29-106. *Undistributed assets and obligations of business associations and utilities.*—(a) The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment, any sum overpaid, or any sum paid in advance for utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit, overpayment, or advance payment was made;

(2) Any sum which a utility has been ordered to refund to a subscriber and which was received for utility services rendered together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund; and

(3) Property described above, without regard to any activity or inactivity within specified abandonment periods, whose owner is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

(b) Any utility which possesses a deposit or other sum which is subject to be presumed abandoned pursuant to the provisions of subsection (a) shall make a reasonable attempt to notify the subscriber who is entitled to such deposit or sum of such possession within three (3) years of the commencement of the seven (7) year period pursuant to subsection (a).

66-29-107. *Undistributed dividends and distributions of business associations.*—Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery is presumed abandoned. Property described above, without regard to any activity

or inactivity within the past seven (7) years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-108. *Property of business associations and banking or financial organizations held in course of dissolution.*—All intangible personal property distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association, banking organization, or financial organization that is unclaimed by the owner after the date for final distribution or liquidation is presumed abandoned.

66-29-108. *Property held by fiduciaries.*—All property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary. Property described above, without regard to any activity or inactivity within the past seven (7) years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-110. *Property held by courts, public officers and agencies.*—All property held for the owner by any court, including a federal court, public corporation, public authority or agency, or public officer, or a political sub-

division, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned, except property in the custody or control of any state or federal court in any pending action or property which is otherwise disposed of by law. Property described above, without regard to any activity or inactivity within the past seven (7) years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-111. *Property held by federal government.*—All property including choses in action in sums certain, and all debts owed, entrusted funds, or other property held by the federal government, or any agency, officer or appointee thereof, is presumed abandoned if the property has been unclaimed for at least seven (7) years. The federal government or a governmental officer or appointee thereof may deduct from the amount paid or delivered to the state treasurer the proportionate share of the actual and necessary cost of examining such records and reporting such information. This state shall hold the federal government harmless to the extent of the value of any property so paid or delivered from any claim which then exists or which thereafter may arise or be made in respect to property delivered to the state treasurer by the federal government. Property described above, without regard to any activity or inactivity within the past seven (7) years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-112. *Miscellaneous property held for another person.*—All property, not otherwise covered by this part, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned. Provided, however, that a layaway account of any retail business association shall not be considered as miscellaneous property held for another person and such accounts shall not be regulated by this part. Property described above, without regard to any activity or inactivity within the past seven (7) years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take his property by will and no one to take his property by intestate succession.

66-29-113. *Report of abandoned property.*—(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this part shall report to the treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars ($25.00) or more presumed abandoned under this part;

(2) In case of unclaimed funds of a life insurance corporation, the full name of the insured or annuitant and

his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25.00) each may be reported in aggregate;

(4) Except for property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the treasurer prescribes by rule as necessary for the administration of this part.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before May 1 of each year, reporting property held as of the previous December 31. The treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this part knows the whereabouts of the owner the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

The treasurer shall promulgate rules and regulations to clarify the provisions of this subsection with respect to the duties of holders.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The treasurer shall keep a record of all reports submitted to him.

66-29-114. *Notice and publication of lists of abandoned property.*—(a) The treasurer shall have notice published of the names and last known addresses of the apparent owners of property in a manner designed to inform owners that property has been reported under the law and where further information on the property may be obtained.

(b) Such notice shall contain a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from a date set by the treasurer, the abandoned property will be placed not later than eighty-five (85) days after such date in the custody of the treasurer to whom all further claims must thereafter be directed.

(c) The treasurer may set a minimum dollar value for items to be advertised which takes into consideration the cost of advertising and the interests of the owners of property. Property which is not advertised shall be accumulated in an organized fashion and shall be made available to the public.

(d) Within one hundred twenty (120) days from the final payment or delivery of abandoned property required by § 66-29-115, the treasurer shall mail a notice to each person having an address reported who appears to be entitled to property of the value of twenty-five dollars ($25.00) or more presumed abandoned under this part.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the treasurer, property is being held to which the addressee appears entitled; and

(2) A statement that the property is in the custody of the treasurer and will be held for the owner until satisfactory proof of claim is presented.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under § 66-29-103.

66-29-115. *Payment or delivery of abandoned property.*—(a) Except as provided in subsection (b), every person who has filed a report under § 66-29-113, within twenty (20) days after the time specified in § 66-29-114 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under § 66-29-104 within twenty (20) days after the filing of the report, shall pay or deliver to the treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in § 66-29-114, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver

the property, which will no longer be presumed abandoned, to the treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(b) Contents removed from any safe deposit box or any other safekeeping repository or agency or collateral deposit box described in § 66-29-104(4)(B), shall be sold or disposed of by the holder in accordance with the procedures set forth in § 45-2-907, or pursuant to instructions received from the treasurer and the proceeds, less reasonable costs of sale and storage, shall be remitted within sixty (60) days of sale.

66-29-116. *Relief from liability by payment or delivery.*—Upon the payment or delivery of abandoned property to the treasurer, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the treasurer under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the treasurer pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the treasurer shall forthwith reimburse the holder for the payment.

66-29-117. *Income accruing after payment or delivery.*—(a) When noninterest-bearing property is paid or delivered to the treasurer under this chapter, the owner

is not entitled to receive income or other increments accruing thereafter.

(b) When interest-bearing property is paid or delivered to the treasurer under this chapter, the owner is entitled to receive interest accruing thereafter under the following conditions:

(1) Interest will be paid at the stated rate the property was earning at the time it was turned over to the treasurer; and,

(2) Interest will be computed by the treasurer at the time a valid claim is established by the owner. The interest will be compounded annually.

66-29-118. *Periods of limitation not a bar.*—The expiration of any period of time specified by statute or court order, during an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the treasurer.

66-29-119. *Sale of abandoned property.*—(a) All abandoned property delivered to the treasurer under this part other than money or property of a type customarily sold in a recognized market, or of a type which is the subject of widely distributed price quotations, may be sold by the treasurer, in accordance with procedures approved by the attorney general, to the highest bidder at public sale at whatever place affords in his judgment the most favorable price for the property involved, or may be disposed of by the treasurer pursuant to § 12-2-112 if real property,

or the State Surplus Personal Property Act of 1976, compiled in §§ 12-2-401—12-2-414, as amended. United States government savings bonds and United States war bonds shall be presented to the United States for payment.

(b) Property of a type customarily sold in a recognized market, or a type which is the subject of widely distributed price quotations, shall, within one (1) year after delivery be sold by the treasurer in accordance with the customs prevailing for the sale of such property at the price considered most advantageous by the treasurer.

(c) Any sale of abandoned property, other than property sold under subsection (b) of this section, held by the treasurer under this section shall be preceded by a single publication of notice thereof at least three (3) weeks in advance of the sale, in a newspaper having general circulation in the county where the property is sold.

(d) The purchaser at any sale conducted by the treasurer pursuant to this part shall receive title to the property purchased free from all claims of the owner or prior holder thereof, and of all persons claiming under or through them. The treasurer or his duly designated agent shall execute all documents necessary to complete the transfer of title.

66 29 120. *Disposition of property having no commercial value.* Any property delivered to the treasurer pursuant to this chapter which has no apparent commercial value shall be retained by the treasurer until such time as he determines to destroy or otherwise dispose of it. Prior to the destruction or disposal of any such property, the determination of the treasurer shall be ap-

proved by the commissioner of general services and the attorney general. Once the destruction or disposition of the property has been approved, the treasurer may at any time thereafter destroy or otherwise dispose of such property, and in that event, no action or proceeding shall be brought or maintained against the state or any officer thereof for or on account of any action taken by the treasurer pursuant to this chapter with respect to such property.

66-29-121. *Disposition of funds.*—(a) Except as provided in subsection (c), all funds received under this part, including the proceeds from the sale of abandoned property under § 66-29-119 shall forthwith be deposited by the treasurer in the general funds of the state, except that the treasurer shall retain in a separate trust account an amount not exceeding one hundred fifty thousand dollars ($150,000) from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) The treasurer is further authorized to expend from the hereinabove created trust account sufficient funds to meet any costs in connection with the acquisition or sale of abandoned property and any costs of mailing and publication in connection with any abandoned property.

(c) For funds received under this part for the report year ending December 31, 1985 and thereafter, the treasurer shall determine each June 30 the amount of such funds remitted by or on behalf of each local government of the state and its agencies which have remained unclaimed for a minimum of eighteen (18) months following their delivery to the treasurer. Provided the aggregate unclaimed balance exceeds one hundred dollars ($100), the treasurer upon request of the local government shall pay an amount equal to the aggregate unclaimed balance, less a proportionate share of the cost of administering the program as determined by the treasurer, to the local government, together with a report of the accounts represented by the funds. These funds shall be placed in the local government's general fund, except the local government shall maintain to the extent necessary a sufficient amount of the total unclaimed property accounts to insure prompt payment as hereinafter provided.

66-29-122. *Agreements to locate reported property.*— (a) The treasurer shall approve all contracts entered between two (2) or more persons whereby one (1) party to the contract agrees to furnish the other party with information concerning property reported to the treasurer under this part; provided, however, that no contract shall be approved until the property that is the subject of such contract has been held by the treasurer for a period of one (1) year from the date advertised by the treasurer.

(b) In all instances where the treasurer is not a party to the contract, the agreed upon fee in such other contracts shall not exceed ten percent (10%) of the value of the recoverable property or fifty dollars ($50.00), whichever is greater.

(c) Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

66-29-123. *Claims for abandoned property paid or delivered—Determination.*—(a) Except as provided in subsection (d), any person claiming an interest in any property delivered to the state under this part may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the treasurer.

(b) The treasurer shall consider any claim filed under this part within ninety (90) days and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(c) If the claim is allowed, the treasurer shall make forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

(d) Any person claiming an interest in any property for which funds have been delivered by the treasurer to a local government pursuant to § 66-29-121 may file a claim thereto with the local government in receipt of the funds. If the claim is allowed, the local government shall make payment forthwith, without deduction for administrative cost or service charges. Any person aggrieved by a finding of the local government may appeal to the treasurer in accordance with subsection (b). If the treasurer finds the claim to be valid, the local government shall issue pay-

ment forthwith. The local government shall submit an annual report of claims received on a form prescribed by the treasurer. This report shall be filed before September 1, reporting claims received as of the previous June 30.

66-29-124. *Claim of another state to recover property—Procedure.*—(a) At any time after property has been paid or delivered to the treasurer under this part another state may recover the property if:

(1) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this part, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property, and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this state under § 66-29-103(6) and under the laws of the state

of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under § 66-29-103 and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the treasurer who shall decide the claim within ninety (90) days after it is presented. The treasurer shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (a).

(c) The treasurer shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

66-29-125. *Judicial action upon determination.*—Any person aggrieved by a finding of the treasurer under § 66-29-123 or upon whose claim the treasurer has failed to act upon ninety (90) days after the filing thereof, may file a complaint to establish his claim in the chancery court for Davidson County, naming the treasurer as a defendant and joining any other persons who may have an interest in the subject property. The suit shall be brought within ninety (90) days after the decision of the treasurer, or within one hundred eighty (180) days from the date of the filing of the claim, if the treasurer fails to act within such ninety (90) days. A copy of the complaint shall also

be served on the attorney general. The suit shall be tried without a jury. If a decree is rendered against the treasurer, he shall make payment in accordance therewith as provided in § 66-29-123. Any aggrieved party may appeal the decision.

66-29-126. *Election to take payment or delivery.*—The treasurer, after receiving reports of property deemed abandoned pursuant to this part, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty (120) days after filing the report required under § 66-29-113, the treasurer shall be deemed to have elected to receive custody of the property.

66-29-127. *Examination of record.*—(a) The treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this part.

(b) The comptroller of the treasury and the various regulatory and taxing agencies of this state shall report to the treasurer any property presumed to be abandoned under this part, held by any person subject to their supervision, regulation, or examination.

66-29-128. *Proceedings to compel delivery of abandoned property.*—If any person refuses to deliver property to the treasurer as required under this part, he shall

bring an action in a court of appropriate jurisdiction to enforce such delivery.

66-29-129. *Penalties.*—(a) Any person who willfully fails to render any report or perform other duties required under this part, shall be punished by a fine of twenty-five dollars ($25.00) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the treasurer as required under this part shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

66-29-130. *Rules and regulations.*—The treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this part.

66-29-131. *Effect of laws of other states.*—This part shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to March 6, 1978.

66-29-132. *Effect on other Tennessee statute.*—(a) In the event that the provisions of this Uniform Disposition of Unclaimed Property Act are in conflict with other provisions of state law, the provisions contained herein will prevail so as to effectuate the intent of this part. Provided, however, that in the event the provisions of this part are in conflict with the provisions of chapter 16 of title 55, the provisions contained in chapter 16 of title 55 will prevail, it being the intent of the legislature that chapter 16 of title 55 will continue to govern unclaimed or abandoned motor vehicles.

(b) Specific note has been taken of the provisions of §§ 31-822—31-829 [repealed], and it is the intent of the legislature that these sections will continue to govern the disposition of unclaimed real property.

(c) Chapter 16 of title 55 governing unclaimed or abandoned motor vehicles, is hereby considered, ratified, and affirmed as if specifically reenacted.

66-29-133. *Uniformity of interpretation.*—This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. Provided, however, nothing in this part shall be construed as superseding any of the provisions of chapter 16 of title 55.

66-29-134. *Agents for enforcement of chapter.*—The treasurer may appoint agents within this state or outside this state for the purpose of carrying out the provisions of this part.